

**Introduced by Senator Machado**

February 19, 2008

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An act to amend Sections 17312 and 17331.2 of the Financial Code, relating to escrow agents.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1286, as introduced, Machado. Escrow Agents' Fidelity Corporation.

Existing law, the Escrow Law, provides for licensure and regulation by the Commissioner of Corporations of persons engaged in business as escrow agents, unless specifically exempted. Existing law requires persons licensed as escrow agents to be members of the Escrow Agents' Fidelity Corporation (Fidelity Corporation), which is established as a nonprofit corporation to indemnify its members against loss, and which is funded by fees and assessments on its members. Existing law limits the coverage provide by Fidelity Corporation to certain types of transactions and provides that indemnity coverage for other transactions be provided by escrow agents through bonding requirements.

This bill would require any private insurance coverage of a member, that also covers a loss that would be covered by Fidelity Corporation, to be applied as primary coverage.

Existing law requires employees of escrow agents and various other persons to obtain a certificate from Fidelity Corporation as a condition of employment or compensation. Existing law requires Fidelity Corporation to deny an application for a certificate or to revoke the certificate under certain circumstances.

This bill would allow a person whose certificate application has been denied or whose certificate has been revoked to file a reapplication for a certificate after a specified time, provided that the person has satisfied

all obligations to Fidelity Corporation under any prior arbitration award or judgment.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 17312 of the Financial Code is amended  
2 to read:

3 17312. (a) Each person licensed pursuant to this division who  
4 is engaged in the business of receiving escrows specified in  
5 subdivision (c) and whose escrow business location is located  
6 within the State of California shall participate as a member in  
7 Fidelity Corporation in accordance with this chapter and rules  
8 established by the board of directors of Fidelity Corporation.  
9 Fidelity Corporation shall not deny membership to any escrow  
10 agent holding a valid unrevoked license under the Escrow Law  
11 who is required to be a member under this subdivision.

12 (b) Upon filing a new application for licensure as required by  
13 Section 17201, persons required to be a member of Fidelity  
14 Corporation shall file a copy thereof concurrently with Fidelity  
15 Corporation. If an application for licensure submitted to Fidelity  
16 Corporation contains personal or confidential information, Fidelity  
17 Corporation and its board shall maintain this information in  
18 confidence to protect the privacy of the information. The copy of  
19 the application shall include the three thousand dollar (\$3,000) fee  
20 specified in subdivision (a) of Section 17320 and all required  
21 Fidelity Corporation Certificates set forth in Sections 17331 and  
22 17331.1. Fidelity Corporation shall promptly furnish to the  
23 commissioner a compliance letter confirming that the applicant  
24 has satisfied the requirements to be a member of Fidelity  
25 Corporation.

26 (c) The required membership in Fidelity Corporation shall be  
27 limited to those licensees whose escrow business location is located  
28 within the State of California and who engage, in whole or in part,  
29 in the business of receiving escrows for deposit or delivery in the  
30 following types of transactions:

31 (1) Real property escrows, including, but not limited to, the  
32 sale, encumbrance, lease, exchange, or transfer of title, and loans  
33 or other obligations to be secured by a lien upon real property.

1 (2) Bulk sale escrows, including, but not limited to, the sale or  
2 transfer of title to a business entity and the transfer of liquor  
3 licenses or other types of business licenses or permits.

4 (3) Fund or joint control escrows, including, but not limited to,  
5 transactions specified in Section 17005.1, and contracts specified  
6 in Section 10263 of the Public Contract Code.

7 (4) The sale, transfer of title, or refinance escrows for  
8 manufactured homes or mobilehomes.

9 (5) Reservation deposits required under Article 2 (commencing  
10 with Section 11010) of Chapter 1 of Part 2 of Division 4 of the  
11 Business and Professions Code or by regulation of the Department  
12 of Real Estate to be held in an escrow account.

13 (6) Escrows for sale, transfer, modification, assignment, or  
14 hypothecation of promissory notes secured by deeds of trust.

15 (d) Coverage required to be provided by Fidelity Corporation  
16 under this chapter shall be provided to members only for loss of  
17 trust obligations with respect to those types of transactions  
18 specified in subdivision (c). *If a loss covered by Fidelity*  
19 *Corporation is also covered by a member's general liability,*  
20 *dishonesty, or indemnity policy, or other private insurance policy,*  
21 *then the member's private policy shall first be applied as the*  
22 *primary indemnity to cover the loss. However, the failure of the*  
23 *member's private primary policy to indemnify the member's loss*  
24 *within the time specified for Fidelity Corporation indemnity in*  
25 *subdivision (a) of Section 17314 shall not limit the indemnity*  
26 *obligations of Fidelity Corporation as defined in this chapter,*  
27 *subject to the respective rights of the member and Fidelity*  
28 *Corporation to indemnity or contribution under the member's*  
29 *private primary policy.* Indemnity coverage for those types of  
30 transactions not specified in subdivision (c) shall be provided by  
31 escrow agents in accordance with Section 17203.1.

32 SEC. 2. Section 17331.2 of the Financial Code is amended to  
33 read:

34 17331.2. (a) Fidelity Corporation shall deny the application  
35 for a certificate or revoke the certificate of any person, upon any  
36 of the following grounds:

37 (1) The application contains a material misrepresentation of fact  
38 or fails to disclose a material fact so as to render the application  
39 false or misleading, or if any fact or condition exists which, if it  
40 had existed at the time of the original application for a certificate,

1 reasonably would have warranted Fidelity Corporation to refuse  
2 originally to issue that certificate.

3 (2) That the person has been convicted of a crime or offense,  
4 whether a felony, an offense punishable as a felony, or a  
5 misdemeanor, that involved dishonesty, fraud, deceit,  
6 embezzlement, fraudulent conversion, misappropriation of  
7 property, or any other crime reasonably related to the qualifications,  
8 functions, or duties of a person engaged in business in accordance  
9 with this division. A conviction within the meaning of this section  
10 is a plea or verdict of guilty or a conviction following a plea of  
11 nolo contendere. A conviction also includes an order granting  
12 probation and suspending the imposition of sentence,  
13 notwithstanding a subsequent order pursuant to Section 1203.4 or  
14 1203.4a of the Penal Code permitting the person to withdraw his  
15 or her plea of guilty and to enter a plea of not guilty, or setting  
16 aside the verdict of guilty, or dismissing the accusation,  
17 information, or indictment. If, however, the conviction is more  
18 than 10 years old, or the conviction has been expunged, or the  
19 person has obtained a certificate of rehabilitation or relief under  
20 Section 1203.4 or 1203.4a of the Penal Code, or if the conviction  
21 was an infraction, then the person may have a Fidelity Corporation  
22 certificate upon showing by clear and convincing proof to a  
23 reasonable certainty that the conviction is no longer reasonably  
24 related to the qualifications, functions, or duties of a person  
25 engaged in business in accordance with this division or that  
26 person's employment with a member.

27 (3) That the person has been held liable in a civil action by final  
28 judgment of any court if the judgment involved dishonesty, fraud,  
29 deceit, embezzlement, fraudulent conversion, or misappropriation  
30 of property or the person has been ordered to make restitution to  
31 a victim in any criminal case involving a crime or offense set forth  
32 in paragraph (2). The person may have a Fidelity Corporation  
33 certificate upon showing by clear and convincing proof to a  
34 reasonable certainty that the judgment or restitution order is no  
35 longer reasonably related to the qualifications, functions, or duties  
36 of a person engaged in business in accordance with this division  
37 or that person's employment with a member.

38 (4) That the person has (A) committed or caused to be  
39 committed an act which caused any member to suffer a loss; (B)  
40 committed or caused to be committed or colluded with any other

1 person committing any act which caused a loss, for which Fidelity  
2 Corporation or the insurer on any insurance policy or fidelity bond  
3 purchased by Fidelity Corporation, or both, to become liable to  
4 indemnify any member; or (C) committed or caused to be  
5 committed an act of dishonesty, fraud, deceit, embezzlement,  
6 fraudulent conversion, or misappropriation of property, to the  
7 material damage of a member or for which the member has been  
8 held liable to any third party, by final judgment.

9 (5) That the person has been barred from employment by final  
10 order of the commissioner pursuant to Section 17423.

11 (6) That the person has been deemed not qualified to serve in  
12 any capacity as a director or officer or in any other position  
13 involving management duties with a financial institution, pursuant  
14 to Division 1.8 (commencing with Section 4990).

15 (7) That the person has been denied coverage or reinstatement  
16 by any insurer under any fidelity bond or crime policy, unless a  
17 decision of reinstatement of coverage has been made after that  
18 denial. A person who obtained a decision of reinstatement of  
19 coverage prior to the effective date of this section may have a  
20 Fidelity Corporation certificate notwithstanding paragraphs (2)  
21 and (3) ~~of this subdivision~~, unless any other ground for denial or  
22 revocation applies to that person.

23 (b) Fidelity Corporation shall suspend the certificate of any  
24 person upon either of the following grounds:

25 (1) That the person has been censured or suspended from any  
26 position of employment by final order of the commissioner. The  
27 certificate suspension shall be for a term concurrent with the final  
28 order of the commissioner.

29 (2) That the person has been barred from any position of  
30 employment or management or control of any escrow agent, for  
31 a term of less than permanent, by final order of the commissioner.  
32 The certificate suspension shall be for a term concurrent with the  
33 final order of the commissioner.

34 (c) Fidelity Corporation may suspend the certificate of any  
35 person under either of the following grounds:

36 (1) That there is an action commenced by the commissioner to  
37 either suspend or bar that person, under Section 17423.

38 (2) That any member with whom the person was employed has  
39 given a proof of loss or a notice of an occurrence which may give  
40 rise to a claim for a loss of trust obligations either of which

1 identifies the person as the person responsible for the loss or as a  
2 person acting in collusion with the person causing the loss.

3 (d) Upon denial of an application for, or upon suspension or  
4 revocation of the certificate of any person, Fidelity Corporation  
5 shall provide written notice to the member with whom that person  
6 is employed of the decision, pending any appeal therefrom which  
7 might be made. Thereafter, the member shall not allow that person  
8 to have access to money or negotiable instruments or securities  
9 belonging to or in the possession of the escrow agent, or to draw  
10 checks upon the escrow agent or the trust accounts of the escrow  
11 agent, but that person may otherwise continue in the performance  
12 and discharge of other duties of an employee. Fidelity Corporation  
13 shall notify the person in writing of the decision to deny, suspend,  
14 or revoke the certificate and of the person's right of appeal, together  
15 with the notice of appeal. The grounds and basis for the decision  
16 shall be stated in the notice thereof. All notices may be served  
17 either personally or by mail, properly addressed to the address of  
18 record for the member and the person.

19 (e) Any person whose application for a certificate has been  
20 denied, or whose certificate has been suspended or revoked, may  
21 appeal the decision, as provided in Section 17331.3. While that  
22 appeal is pending, the person may not have access to money or  
23 negotiable instruments or securities belonging to or in the  
24 possession of the escrow agent, or to draw checks upon the escrow  
25 agent or the trust accounts of the escrow agent, but that person  
26 may otherwise continue in the performance and discharge of other  
27 duties of an employee pending final decision of that person's  
28 appeal. Failure to remove the person whose application has been  
29 denied, or whose certificate has been suspended or revoked, as a  
30 signer on the trust accounts may be subject to action by the  
31 commissioner as provided for in this division and shall be subject  
32 to penalties as set forth in Section 17331.1.

33 (f) Upon expiration of the time for an appeal, or upon conclusion  
34 of the appeal, the decision to deny an application for or to suspend  
35 or revoke the certificate of any person shall become final. Fidelity  
36 Corporation shall give written notice to the member and to the  
37 person of the final decision within 10 days. Thereafter, Fidelity  
38 Corporation shall disclose in writing to all members the identity  
39 of persons whose application has been denied or whose certificate  
40 has been revoked. *The person whose certificate has been denied*

1 *or revoked may file a certificate reapplication after the period of*  
2 *time specified in Section 11522 of the Government Code, dating*  
3 *from the Fidelity Corporation final decision, provided that the*  
4 *person has satisfied all obligations to Fidelity Corporation under*  
5 *any prior arbitration award or judgment.*

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